

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

MICHAEL DONALD OWSLEY,)
Register No. 122118,)
)
)
Plaintiff,)
)
)
v.) No. 04-4132-CV-C-NKL
)
)
JILL McGuIRE, Superintendent of)
Tipton Correctional Center, et al.,)
)
)
Defendants.)

ORDER

On February 2, 2006, the United States Magistrate Judge recommended granting plaintiff's motion for default judgment against Dr. Henry Taylor. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

The court has conducted a de novo review of the record, including the exceptions filed by defendant Dr. Henry Taylor. Because default has not yet been entered, rather only recommended by the Magistrate Judge, the cases cited by defendant in his exceptions regarding setting aside a default judgment are not dispositive. Defendant Taylor acknowledges personal service of process on September 6, 2005; therefore, he clearly failed to timely plead or otherwise defend against plaintiff's complaint. However, upon consideration of defendant Taylor's plausible explanation, the overriding preference for resolution of cases on the merits, and the lack of prejudice to plaintiff, plaintiff's motion for default judgment will be denied.

IT IS, THEREFORE, ORDERED that the Magistrate Judge's February 2, 2006, Report and Recommendation is overruled [56]. It is further

ORDERED that plaintiff's motion for default judgment against Dr. Henry Taylor is denied [41].

/s/

NANETTE K. LAUGHREY
United States District Judge

Dated: March 22, 2006
Jefferson City, Missouri